

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

RONNIE WILMER,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 02-458-SLR
)	
CITY OF WILMINGTON POLICE)	
DEPARTMENT, STATE OF)	
DELAWARE, and ANTHONY)	
FIGLIOLA,)	
)	
)	
Defendants.)	

MEMORANDUM ORDER

Ronnie Wilmer is a pro se litigant who is presently incarcerated at the Delaware Correctional Center (DCC) located in Smyrna, Delaware. His SBI number is 162772. He filed this action pursuant to 42 U.S.C. § 1983 and requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.

Reviewing complaints filed pursuant to 28 U.S.C. § 1915 is a two step process. First, the court must determine whether the plaintiff is eligible for pauper status. The court granted plaintiff leave to proceed in forma pauperis on May 28, 2002 and ordered him to pay \$10.00 as an initial partial filing fee within thirty days. On July 25, 2002, the court dismissed the complaint without prejudice and removed the assessed filing fee because plaintiff had not paid the initial partial filing fee in the time provided. On September 10, 2002, plaintiff paid the \$10.00

initial partial filing fee. Therefore, the court shall direct the clerk of the court to reopen the case and reassess the filing fee pursuant to 28 U.S.C. § 1915 (b).

Once the pauper determination is made, the court must then determine whether the action is frivolous, malicious, fails to state a claim upon which relief may be granted or seeks monetary relief from a defendant immune from such relief pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1).¹ If the court finds the plaintiff's complaint falls under any one of the exclusions listed in the statutes, then the court must dismiss the complaint.

When reviewing complaints pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1), the court must apply the standard of review set forth in Fed. R. Civ. P. 12(b)(6). See Neal v. Pennsylvania Bd. of Probation and Parole, No. 96-7923, 1997 WL 338838 (E.D. Pa. June 19, 1997) (applying Rule 12(b)(6) standard as appropriate standard for dismissing claim under § 1915A). Accordingly, the court must "accept as true the

¹ These two statutes work in conjunction. Section 1915(e)(2)(B) authorizes the court to dismiss an in forma pauperis complaint at any time, if the court finds the complaint is frivolous, malicious, fails to state a claim upon which relief may be granted or seeks monetary relief from a defendant immune from such relief. Section 1915A(a) requires the court to screen prisoner in forma pauperis complaints seeking redress from governmental entities, officers or employees before docketing, if feasible and to dismiss those complaints falling under the categories listed in § 1915A (b)(1).

factual allegations in the complaint and all reasonable inferences that can be drawn therefrom." Nami v. Fauver, 82 F.3d 63, 65 (3d Cir. 1996). Pro se complaints are held to "less stringent standards than formal pleadings drafted by lawyers and can only be dismissed for failure to state a claim if it appears 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" Estelle v. Gamble, 429 U.S. 97, 106 (1976) (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)).

The standard for determining whether an action is frivolous is well established. The Supreme Court has explained that a complaint is frivolous "where it lacks an arguable basis either in law or in fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989).² As discussed below, plaintiffs's claims have no arguable basis in law or in fact, and shall be dismissed as frivolous pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1).

II. DISCUSSION

A. The Complaint

Plaintiff alleges that on January 12, 2000, members of the Wilmington Police Department unlawfully searched his home which

² Neitzke applied § 1915(d) prior to the enactment of the Prisoner Litigation Reform Act of 1995 (PLRA). Section 1915(e)(2)(B) is the re-designation of the former § 1915(d) under the PLRA. Therefore, cases addressing the meaning of frivolousness under the prior section remain applicable. See § 804 of the PLRA, Pub.L.No. 14-134, 110 Stat. 1321 (April 26, 1996).

resulted in his unlawful arrest. (D.I. 2 at 3) He further alleges that his defense counsel, defendant Figliola, was ineffective and violated his constitutional rights. (Id.) Although he has named both the State of Delaware and the City of Wilmington Police Department as defendants, plaintiff has not raised any specific allegations regarding these defendants. (Id.) Plaintiff requests that the court award him compensatory and punitive damages. (Id. at 4)

B. Analysis

1. Plaintiff's Unlawful Arrest Claim

Although plaintiff has cast his allegations in terms of his arrest, he is in essence attacking his conviction. Plaintiff's sole federal remedy challenging the fact or duration of his confinement is by way of habeas corpus. Preiser v. Rodriguez, 411 U.S. 475 (1973). A plaintiff cannot recover damages under § 1983 for alleged false imprisonment unless he proves that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus. Heck v. Humphrey, 512 U.S. 477, 487 (1994). Plaintiff has not alleged that his conviction or sentence was reversed or invalidated by any means required under Heck. In fact, this court has denied plaintiff's petition for writ of habeas corpus on the merits.

See Wilmer v. Carroll, CA No. 02-1587-SLR (D. Del. dismissed May 19, 2003). Consequently, plaintiff's unlawful arrest claim lacks an arguable basis in law or in fact. Therefore, the court finds that plaintiff's unlawful arrest claim is frivolous within the meaning of 28 U.S.C. §§ 1915(e) (2) (B)-1915A(b) (1) and shall be dismissed.

2. Plaintiff's Ineffective Assistance of Counsel Claim

Section 1983 requires plaintiff to show that the person who deprived him of a constitutional right was "acting under color of state law." West v. Atkins, 487 U.S. 42, 48 (1988) (citing Parratt v. Taylor, 451 U.S. 527, 535 (1981)). (overruled in part on other grounds by Daniels v. Williams, 474 U.S. 327, 330-31 (1986)). Public defenders do not act under color of state law when performing a lawyer's traditional functions as counsel to a defendant in criminal proceedings. Polk County v. Dodson, 454 U.S. 312 (1981). Furthermore, public defenders are entitled to absolute immunity from civil liability under 42 U.S.C. § 1983. Black v. Bayer, 672 F.2d 309 (3d Cir. 1982). Because defendant Figliola has not acted under color of state law and is immune from liability under 42 U.S.C. § 1983, plaintiff's claim against him lacks an arguable basis in law or in fact. Therefore, the court finds that plaintiff's claim against

defendant Figliola is frivolous within the meaning of 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1) and shall be dismissed.

NOW THEREFORE, IT IS HEREBY ORDERED this 8th day of July 2003, that:

1) The clerk of the court shall reopen the case and reassess the filing fee pursuant to 28 U.S.C. § 1915(b). However, plaintiff shall not be required to pay any remaining balance on the \$150.00 filing fee.

2) Plaintiff's unlawful arrest claim is dismissed as frivolous pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1).

3) Plaintiff's claim against defendant Figliola is dismissed as frivolous pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1).

4) The clerk shall mail a copy of the court's Memorandum Order to the plaintiff.

Sue L. Robinson
United States District Judge